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December 17, 1997

Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

RECEIVED
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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Docket No. 87-268

Dear Ms. Salas:

On behalf of Malrite Communications Group, Inc., there is transmitted herewith and filed an original and four (4) copies of its "Comments in Response to Ex Parte Filings" tendered to the Commission by the Association for Maximum Service Broadcasters and the Association of Local Television Stations, Inc.

Should any questions arise with regard to the attached comments, please communicate directly with the undersigned.

Very truly yours,

KAYE, SCHOLER, FIERMAN,
HAYS & HANDLER, LLP

By: Bruce A. Eisen

Bruce A. Eisen

Enclosure

WASHINGTON, D.C. 20554

In the Matter of)
)
Advanced Television Systems) MM Docket No. 87-268
and their Impact Upon the Existing)
Television Broadcast Service)

Doc #12154796.DC

reflect its continuing interest in the technological innovations that accompany the arrival of the Advanced Digital Television Service. In prior-filed comments, Malrite has urged the Commission to determine initial power levels through the use of service area replication, and has demonstrated that a number of television stations will be seriously impacted if they are allotted the facilities proposed in Appendix B to the Sixth Report and Order, adopted April 3, 1997 (FCC 97-115, released April 21, 1997).

2. In particular, Malrite has demonstrated that the Commission had provided unacceptably low power to certain DTV channels placed on VHF frequencies. Among those stations facing potential injury is Malrite Station WOIO(TV) at Shaker Heights, Ohio which will fail to replicate its present NTSC Grade B contour under the Commission's present plan. In order to minimize such disadvantages, Malrite further requested the Commission to add a realistic measure of flexibility at the time that DTV applications are filed. In so doing, the Commission would allow DTV stations to negotiate interference areas with both DTV and NTSC facilities so that service could be maximized within respective ADIs. Each of Malrite's suggestions was premised upon its reasoned belief that the new DTV rules could

not be implemented without coming to terms with several important questions.

3. Malrite's comments, together with those of other television licensees, were filed many months ago.¹ In the interim, Malrite has filed applications for new DTV facilities at its licensed stations WXIX(TV), Newport, Kentucky; WNWO(TV), Toledo, Ohio; WOIO(TV), Shaker Heights, Ohio; and WFLX(TV), West Palm Beach, Florida. Malrite has also filed an application for experimental authority to utilize digital television transmitting facilities at WOIO(TV). Each of these proposals was filed with an understanding that the Commission would require a rapid construction period in order to promote DTV's competitive strength. The Commission has noted, in particular, that digital broadcast television stood a risk of failing unless it "rolled out quickly". See, Fifth Report and Order in MM Docket No. 87-268, adopted April 3, 1997, FCC 97-116 (released April 21, 1997). Indeed, much of the Commission's expectations surrounding the

¹ Malrite filed its comments in response to the Sixth Further Notice of Proposed Rulemaking on November 22, 1996.

implementation of DTV is based upon its confidence in the willingness of licensees to rapidly deploy the new technology.²

4. Notwithstanding Malrite's desire to expeditiously proceed through the application process and to thereby construct DTV facilities at the aforementioned licensed stations, the Commission has now raised the prospect of unwarranted delay by seeking comments on the ex parte filings made by MSTV and ALTV. Malrite herein addresses those comments, but hopes that the various filings to be made by interested parties will not needlessly delay the final adoption of a Table of Allotments for DTV, nor impede in any way the processing of Malrite's pending DTV applications.

The Ex Parte Comments

(a) ALTV

5. Annexed hereto is the engineering statement of Ralph E. Evans, III, of Evans Associates Consulting Telecommunications Engineers. Mr. Evans, who has submitted technical information in

² The Commission may take official notice of the many articles which have appeared in the communications trade press over the past twelve months that attribute to Commission staff and Commissioners, themselves, the need of television broadcasters to quickly convert to DTV operation.

previous Malrite filings in this docket, has addressed both the MSTV and the ALTV proposals as they relate to the DTV Table of Allotments.

6. Malrite generally supports ALTV's comments which reference matters already raised by Malrite in prior filings, i.e., the disparity in the authorized power between the DTV channels assigned to existing UHF facilities, and the power assigned to the UHF band to existing VHF stations. Hence, as the engineering statement recites, Malrite agrees with ALTV that the disparity between V-to-U stations and U-to-U stations must be addressed in order to insure competitive parity among the television services.

7. ALTV has proposed that DTV stations be allowed to increase power to 1 megawatt, provided that tilt-beam antennas and/or other technologies are used to prevent any incremental visible interference. While ALTV believes that its proposal will help resolve the power issue through its plan to permit power increases without changing the protected contours contained in an FCC allocation scheme, Malrite believes that there are other factors in addition to the "beam tilt" solution that could be used to achieve parity. In this regard, Malrite has proposed the adoption of an "Allocation Toolkit" derived from proposals made

not only by Malrite in the past, but by other commenters in this proceeding. The engineering statement lists the "tools", the reason for employing them, and a suggested summary which would be required at the application stage. In some cases, concurrence of an affected station would be required. This is in keeping with Malrite's previous comments concerning inter-licensee coordination. The Commission should adopt the "toolkit" approach. Its utilization in conjunction with a requirement for maximum power levels to be assigned to all broadcast TV stations in each band, would result in an equitable allocation system.

(b) **MSTV**

8. Malrite opposes the significant number of changes to the DTV table as urged by MSTV. Nevertheless, the attached engineering statement shows that the kinds of revisions to the table offered by MSTV can be adequately addressed through the use of the suggested "toolkit" approach.

9. If the "blanket changes" proposed by MSTV were adopted by the Commission the V-to-U stations would be disproportionately enhanced so that, as the engineering statement reflects, their already extensive service areas would be increased through the

corresponding reduction in interference. Independent U-to-U stations would be harmed. For instance, MSTV's proposal would shift Malrite Stations WXIX(TV) and WNWO(TV) to 60+ channels, placing which found themselves proximate to the land mobile frequencies in the Channel 62 to 69 range at a competitive disadvantage. In short, MSTV's attempt to revise the Table of Allocations by adding 32 allotments between Channels 62-69, is not only grievously late-filed, but represents a self-serving proposal to benefit its own members rather than the television industry as a whole. The annexed engineering statement concludes that the true effect on the overall allocation scheme can be ascertained and compared to other proposals only through a case-by-case analysis and not by the MSTV biased blunderbuss approach.

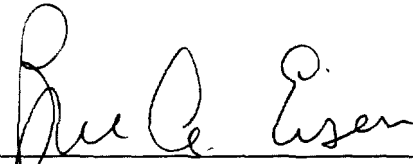
Conclusion

Malrite requests the Commission to resolve the matters raised in this further proceeding as expeditiously as possible.

The Commission should adopt the ALTV proposal with additional reliance upon Malrite's proposed "toolkit", and deny MSTV's suggested wholesale changes to the DTV table.

Respectfully submitted,

MALRITE COMMUNICATIONS GROUP, INC.

By: 
Bruce A. Eisen
Its Attorney

KAYE, SCHOLER, FIERMAN,
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December 17, 1997

ENGINEERING STATEMENT

This engineering statement has been written by Ralph E. Evans III, of Evans Associates Consulting TeleCommunications Engineers in Thiensville, Wisconsin, on behalf of Malrite Communications Group Incorporated. This statement supports the comments by Malrite with respect to the *ex parte* filing by the Association for Maximum Service Telecasters (MSTV) addressing alleged shortcomings in the Digital TV allotments as tabulated in the FCC's Sixth Further Notice of Proposed Rulemaking (MM Docket 87-268). Accordingly, this exhibit has been prepared.

Background

Docket 87-268 and the FCC's Sixth Further Notice of Proposed Rulemaking address the matter of Advanced (Digital) Television Systems and their impact upon the existing television broadcasting service. On November 20th, 1997, MST submitted several "suggestions" for addressing two issues relating to the DTV table of allotments:

- DTV-to-DTV adjacent channel assignments
- Interference to assignments in congested areas, such as the Great Lakes, East and West Coasts

MST suggests making 357 changes to the DTV table, which would purportedly alleviate the extent of interference caused to adjacent channel assignments and to those DTV and NTSC stations within the congested areas. MST asserts that the use of an additional 32 allotments in the channel 60 to 69 range would assist these efforts to reduce interference.

Five days after the MST exhibit was filed, the Association of Local Television Stations (ALTV) submitted a proposal which addressed the disparity in the authorized power between the DTV channels assigned to existing UHF facilities (*U-to-U Assignments*) and the power assigned in the UHF band to existing VHF stations (*V-to-U Assignments*). The power disparity is especially acute with respect to lowband television facilities (Channels 2-6), which are evidently being overcompensated with respect to power levels in the transition to UHF digital television¹.

On December 2nd, 1997, the FCC released a Public Notice seeking comments on the MST and ALTV proposals. Since both of these filings impact Malrite TV properties, and since they illustrate technical matters discussed by Malrite in previous exhibits, this response has been prepared.

¹ This is commonly referred to as the "V-to-U" problem. The problem originated because of attempts to make UHF propagation emulate VHF coverage contours, without regard to other limitations inherent at VHF frequencies such as impulse noise and frequent interference due to weather inversion.

Malrite's Position re: MST and ALTV Filings

At this late date, Malrite opposes the "blanket changes" in the DTV table suggested by MSTV, believing that revisions of this nature may be more expeditiously handled on a case-by-case basis, using a "*Tool Kit*" of DTV allocation techniques. In the original table, use of frequencies outside of the core were minimized, as were frequencies proximate to the land mobile channels from 60-69. Although Malrite initially supported an expansion of channel assignments to the higher frequencies, this would have been acceptable ONLY IF the core frequencies were similarly extended, and ONLY IF land mobile was not a factor. Neither of these events has occurred, nor are they likely to occur.

It appears from inspection of the MST proposed changes that the primary beneficiaries of these channel adjustments would be the V-to-U facilities, which would have their already extensive service areas further increased via a corresponding reduction in interference². This "improvement" would come at the expense of the independent U-to-U stations, lower power local stations, and many educational facilities which have not had an opportunity to maximize their power. Many of these TV facilities would be shifted to 60+ channels (for instance Malrite stations in Newport Kentucky and Toledo Ohio). The latest MST filing can be viewed as an attempt to "slide in" a set of allocations beyond the 12th hour, many of which are obviously favorable to some of its members, and which could not be thoroughly studied. Accordingly, Malrite believes that the MST changes should be scrutinized in the "light of day", where the true effect on the overall allocation scheme can be ascertained and compared to other proposals on a case-by-case basis.

Regarding the ALTV proposal, Malrite agrees with ALTV that the disparity between V-to-U stations and U-to-U stations must be addressed. Malrite believes that ALTV's "beam tilt" solution, however, is only one tool which could be used to achieve the desired parity. Further, Malrite believes that the same **maximum power level** should be assigned to all broadcast TV stations in each band in order to avoid "locking in" some digital TV facilities to inferior technical parameters. The coverage for these inferior stations could become inadequate as their service population expands. Having a maximum power level as a matter of right, subject to interference considerations³, effectively mirrors the present NTSC TV practice, and would not expose stations requesting upgrades to the competitive application process. Such a system, combined with the "*Tool Kit*" described below, would yield a fair and equitable allocation system.

² It is noted that some U-to-U stations would benefit, such as shown in Appendix E of the MST exhibit. However, it appears that the main thrust of the changes is to improve coverage of the old line high power stations at the expense of the educational and lower power local facilities. It would seem that the notion of "equivalent service area" has been taken too far, and should perhaps contain a component of population within the local DMA.

³ The "Will Rogers" philosophy: "Your freedom to swing your arm ends where my chin begins."

At the same time, the concept of "equivalent coverage" does NOT have to be abandoned in order to implement the maximum power concept. It is noted that the original UHF channel assignments were made to VHF stations with high power operation in mind; therefore, as a group, their DTV channels are generally clearer of interference and reflect higher power which can be achieved non-directionally. Malrite therefore submits that the VHF stations have received their "quid pro quo" already by virtue of the assignment process, and further compensation is neither necessary nor equitable.

Malrite submits that all stations, whether V-to-U or U-to-U, could benefit from the establishment of maximum power limits, subject to certain interference considerations outlined below under the "Tool Kit". Suggested power limits are as follows:

1. UHF: 1,000 kW⁴
2. High-Band VHF: 50 kW
3. Low-Band VHF: 17 kW

The matter of power increases beyond these limits could be addressed as part of a future Rulemaking, after the DTV application process slows down.

In summary, Malrite believes that the matters raised by MST are best handled on a case-by-case basis, while the ALTV proposal should be incorporated as a larger set of tools which should be incorporated by the FCC into the Final Rules in re: Docket 87-268. Malrite does not believe that the adoption of such tools would significantly extend the Rulemaking process, because they would only take effect for stations proposing facilities in excess of those assigned in the DTV allocation table.

The DTV Allocation Toolkit

Malrite has prepared a summary of the technical techniques which could be used to implement a dynamic, living allocation process for digital television. These techniques are a distillation of proposals made by Malrite and other respondents to the FCC's *Sixth Report and Order*, and are presented in the form of a *Digital Television Application Toolkit*.

Each tool is listed in the table below, along with the reason for employing it and a brief suggested summary of the showing which would be required at the application stage. These tools would not apply to the "fast track" applications which propose to use FCC-assigned facilities. As noted some tools would be permitted after FCC staff review, while others would require the concurrence of the affected station. This table is was developed for DTV-to-DTV assignments, and would enable an expeditious process to maximize DTV facilities on a case-by-case basis without putting an undue processing burden upon the FCC.

⁴ Except Puerto Rico, where terrain considerations make higher power mandatory.

This leaves the matter of DTV protection to existing NTSC facilities. It is obvious that existing NTSC stations will cause major distortions in directional antenna patterns for DTV, which will no longer be necessary when NTSC transmission is phased out.

Accordingly, it is also suggested that these same tools be initially applied to DTV-to-NTSC showings. After a period of time, perhaps coincident with the possible DTV power increase NPR as discussed above, the interference requirements to NTSC facilities could become less stringent.

The suggested tool kit is tabulated as follows:

Tool	Showing Required @ Application	Purpose
Beam Tilt	Lack of Net New Interference Given, as per Items Below	Higher City Saturation
Directional Antenna	Lack of Net New Interference Given, as per Items Below	Improve Coverage in Critical Areas
Terrain Refraction Loss	Profiles Using FCC Tech Note 101	More Precisely Define Interference Areas
Trade off Interference Given	Approval of Affected Station	Improve coverage in the DMA
Interference Taken	Net increase in persons served within DMA	Accommodate Directional Antennas
Overlap over Water	Lack of New Interference Over Land Area	Accommodate Directional Antennas

Malrite believes that the adoption of this "Toolkit", which incorporates the ALTV suggestions and rejects the MSTV "blanket" solution, would be in the public interest.

Respectfully Submitted,

Ralph E. Evans III
Consultant for Malrite
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AFFIDAVIT

COUNTY OF OZAUKEE

SS:

STATE OF WISCONSIN

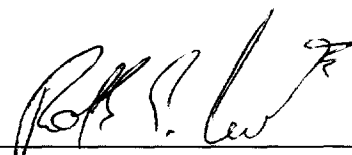
RALPH E. EVANS, being duly sworn upon oath deposes and says:

That his qualifications are a matter of record with the Federal Communications Commission;

That he is a Consulting TeleCommunications Engineer, and is a partner in the firm of Evans Associates;

That this firm has been retained by Malrite Communications Group, Inc. to prepare this engineering exhibit;

That he has either prepared or directly supervised the preparation of all technical information contained in this engineering statement, and that the facts stated in this engineering statement are true of his knowledge, except as to such statements as are herein stated to be on information and belief and as to such statements he believes them to be true.



Ralph E. Evans

Subscribed and sworn to before me this 15th day of December, 1997.

 My Commission expires Oct 22, 2000.
Notary Public

NOTICE

This exhibit and the work it is based on represents our best interpretation of existing information, technical data, FCC Rules and policies, and policies and rules of other agencies. However, these data, rules and policies and their interpretation by the FCC or other agencies are constantly changing. Therefore, we do not warrant this work to be acceptable to the FCC or other agency, that any undertaking based on it will be successful, or that further submittals, administrative actions or litigation will not be required by others in support of this proposal or future undertaking. In the event of errors, our liability is strictly limited to replacement of this document with a corrected one. Liability for consequential damages is specifically disclaimed. Favorable action on this application by the FCC, FAA, or other federal and state agencies, is not guaranteed.

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CERTIFICATE OF SERVICE

I, Toni R. Daluge, a secretary in the law firm of Kaye, Scholer, Fierman, Hays & Handler, LLP, do hereby certify that on this 17th day of December, 1997, copies of the foregoing "Comments of Malrite Communications Group, Inc. in Response to Ex Parte Filings" have been hand delivered to the following:

Richard M. Smith
Chief, Office of Engineering and Technology
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554


Toni R. Daluge